HIPAA Non-Medicaid Program Health Plan Status Worksheet

This worksheet should be used to determine whether a DHFS program is a health plan under HIPAA. On advice of legal counsel, DHFS is erring on the side of inclusion. Any government-funded program that provides health care should be considered a health plan unless it meets one of the three exclusions cited in section (2) (ii) of the privacy rule. This worksheet should be completed for each questionable program to determine whether any of the exclusions apply.

A health plan is "an individual or group plan that provides or pays the costs of medical care"[1]. Government-funded programs are *exempt* from health plan status if they meet *any* of these conditions:

1. The program's principal purpose is other than providing or paying for health care[2], or
2. The program's principal activity is the direct provision of health care to persons, or
3. The program's principal activity is the making of grants to fund the direct provision of health care to persons.

Program:

Worksheet completed by:

Conclusions approved by:

Status:

- ☐ Is a health plan
- ☐ Is a health plan statewide, but county status varies
- ☐ Is not a health plan
- ☐ Status unclear. Referred to working group.

Summary narrative:

[1] S 160.103 of the Privacy Rule.

[2] Jean Gilpin separates this one condition into two, which has a different effect than if they are left together as one exemption. In this paper the original combined condition is used instead.

Test 1: Statewide, is the program's *principal purpose* providing or paying for health care[3]?

Test 1a: Do *formal statements* of program purpose or goals establish that the principal purpose is (or is not) providing or paying for health care?

Factors

Review formal statements of purpose from sources such as:

- the description in the Catalogue of Federal Domestic Assistance,
- federal law and state law establishing the program,
- federal and state rules and regulations governing the program,
- any other federal and state materials describing the program.

Copy or extract and attach the most relevant materials and hi-light the most telling language. List citations for other, less critical or more voluminous references used.

Result Narrative (summarize the reasoning for the result decision)

Test 1a Result

☐ The principal purpose is providing or paying for health care. The program may be a health plan. Apply Test 2.

☐ The principal purpose is not providing or paying for health care. The program is not a health plan.

☐ Whether the principal purpose is providing or paying for health care is not clear. Apply Test 1b.

[3] See Appendix 1: Defining Health Care Services

Test 1b: Statewide, is the *preponderance of services* provided in the program health care?

If the principal purpose is not clear from formal statements, it must be judged based on whether there is a preponderance of health care services provided statewide. Attach materials to support judgements of whether, statewide, health care is the majority of services by type, by volume, and/or by budget. Explain how the final judgement weighed all three factors. Explain any other factors used. Include listings of services considered health care and not health care.

Factors

Preponderance of services types statewide.

- Is the majority of services provided through the program health care?

Preponderance of service volume statewide.

- Is the majority of service volume provided through the program health care?

Preponderance of budget statewide.

- Is the majority of the services budget for health care?

Result Narrative (summarize the reasoning for the result decision)

Test 1b Result

☐ The preponderance of services is health care. The program may be a health plan. Apply Test 2.

☐ The preponderance of services is not health care. The program is not a health plan.

☐ The preponderance of services is not clear. Apply Test 2.

Test 2: Is the health care of the program *principally provided directly* by the program administrator?

If the principal purpose of the program is health care provision, the next test is whether the program administrator mostly provides the services directly, as opposed to paying others to provide them. Most programs in DSL and DPH are jointly administered by DHFS and county agencies. In these cases the focus is whether the county agencies mostly directly provide the services by staff they supervise, as measured by volume of services or budget. Preferably, this test can be applied statewide. If not, it will be necessary to assess each county's arrangements and the health plan status may vary county by county.

DHCF administers most of its programs without county involvement (often using a business associate such as EDS). Here the focus is on the interaction between the Division, its business associate, and the providers. A statewide application of the test should be possible.

Attach materials to support judgements. Include listings of services provided directly and not directly.

Factors

- Is the majority of the health care services provided by
  - salaried or hourly staff of the program administrator or
  - contract staff under the supervision of salaried staff of the program administrator?
- Is the majority of the health care budget
  - for salaried or hourly staff of the program administrator
  - or contract staff under the supervision of salaried staff of the program administrator?

Result Narrative (summarize the reasoning for the result decision)

Test 2 Result

☐ Health care services are principally provided directly by the program administrator. The program is not a health plan.

☐ Health care services are not principally provided directly by the program administrator. The program may be a health plan. Apply Test 3.

Test 3: Principal program funding method

Test 3 determines health plan status based on the nature of the funding of health care services, from the program administrator to the provider. If funding is principally via fee-for-service or capitation, then the program is a health plan. If funding is principally through grants, then the program is not a health plan. While two sub-tests are described, they should be considered simultaneously to determine the principal funding method.

As with Test 2, it will be preferable if this test can be applied statewide. If not, it will be necessary to assess each county's arrangements and the health plan status may vary county by county.

Attach materials addressing factors supportive of the conclusion. Be sure to explain who is the program administrator.

Test 3a: Is the program's principal activity the *funding* of health care by the program administrator *through grants*?

Factors

Governing language describes a grant relationship between the program administrator and the provider

- What language in law or rules governing the program identifies the funding of the provider as a grant?

Characteristics of grants

For the majority of the health care services provided or the health care budget, do the following characteristics of funding via grant apply?

- The grantor defines the population to be served but does not determine eligibility or enroll individual participants.
- The grantor is not involved in the payment to specific providers for the provision of individual services to individual recipients.
- The grantor does not pay periodic enrollment fees for individual participants.
- The grantee has some flexibility in how the program is administered, although the grantee may be audited.
- The grantor may require periodic reporting of services provided to individuals, but to ensure compliance with program intentions rather than for reimbursement.

Result Narrative (Summarize the reasoning for the result decision. Be sure to identify who is the program administrator/grantor.)

Test 3a Result

☐ The program's principal activity is the *funding* of health care by the program administrator *through grants.* The program is not a health plan.

☐ The program's principal activity is the *funding* of health care by the program administrator *through means other than grants.* The program is a health plan. Apply Test 3b.

Test 3b: Is the program's principal activity the *funding* of health care by the program administrator through *means other than grants* (i.e., fee-for-service or capitation)?

Factors

Governing language describes a capitation or fee-for-service funding relationship between the program administrator and the provider

- What language in law or rules governing the program identifies the funding of the provider as fee-for-service or capitation?

The majority of health care services or the health care budget is paid by fee-for-service or capitation.

- The program administrator makes payments to specific providers for the provision of individual services to individual recipients (in response to recipient-specific claims), or
- The program administrator enrolls individual participants in a provider's managed care plan and pays periodic enrollment (or capitation) fees.

Result Narrative (summarize the reasoning for the result decision)

Test 3b Result

☐ The program's principal activity is the *funding* of health care by the program administrator *through fee-for-service or capitation.* The program is a health plan.

☐ The program's principal activity is the *funding* of health care by the program administrator *through means other than grants, fee-for-service or capitation.* The program is a health plan. (The result narrative describes the funding method).